



February 22, 2002

ENGROSSED SENATE BILL No. 248

DIGEST OF SB 248 (Updated February 20, 2002 12:23 PM - DI 94)

Citations Affected: IC 32-15; IC 33-19.

Synopsis: State legal claims. Exempts the attorney general from paying the small claims costs fee. Makes technical corrections. Establishes procedures for legal actions that involve state liens or other encumbrances on real property.

Effective: July 1, 2002.

Bray

(HOUSE SPONSORS — STURTZ, FOLEY)

January 7, 2002, read first time and referred to Committee on Judiciary.
January 24, 2002, reported favorably — Do Pass.
January 28, 2002, read second time, ordered engrossed.
January 29, 2002, engrossed.
January 31, 2002, read third time, passed. Yeas 48, nays 2.

HOUSE ACTION

February 5, 2002, read first time and referred to Committee on Local Government.
February 21, 2002, amended, reported — Do Pass.

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ES 248—LS 6847/DI 69+



February 22, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

ENGROSSED SENATE BILL No. 248

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-15-6.1 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2002]:

4 **Chapter 6.1. Actions Involving State Liens**

5 **Sec. 1. If:**

6 **(1) the state has a lien or other encumbrance on real property;**
7 **and**

8 **(2) an action is brought concerning a lien or other**
9 **encumbrance on the real property that has greater priority**
10 **than the state's lien or encumbrance, including:**

11 **(A) an action:**

12 **(i) involving foreclosure of the prior lien or**
13 **encumbrance; or**

14 **(ii) that otherwise affects the lien or encumbrance of the**
15 **state; or**

16 **(B) an action brought to foreclose the equity of redemption**
17 **of the real property after a sale for unpaid taxes or another**

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1 municipal lien;
 2 the lien or encumbrance of the state and its priority may be
 3 considered in the action and decided by the court.

4 Sec. 2. (a) In an action described in section 1 of this chapter,
 5 notice shall be sent to the state that contains the following:

- 6 (1) The names of the parties.
 7 (2) A description of the lien or encumbrance of the state.
 8 (3) The date by which the state must answer. However, the
 9 time in which the state is required to answer must be the same
 10 as the time allowed for defendants who receive personal
 11 service in Indiana to file answers.
 12 (4) If the lien or encumbrance is for an inheritance tax, the
 13 following if known:

- 14 (A) The name of the decedent.
 15 (B) The date of the individual's death.
 16 (C) The state and county in which the individual resided on
 17 the date of death.
 18 (D) The names and addresses of:
 19 (i) the decedent's personal representatives; or
 20 (ii) if personal representatives have not been appointed,
 21 the names and addresses of the decedent's heirs at law.
 22 (5) If the lien or encumbrance involves:
 23 (A) unpaid corporate taxes; or
 24 (B) interest, costs, or penalties imposed on unpaid
 25 corporate taxes;
 26 the name of the corporation that is required to pay the
 27 corporate taxes.

28 (b) The plaintiff, the plaintiff's attorney, or the court clerk shall
 29 issue the notice.

30 (c) If the lien or encumbrance of the state is for:

- 31 (1) a tax payable to the state or for any other right or claim of
 32 the state, the notice shall be served on the attorney general;
 33 and
 34 (2) a recognizance entered into or a criminal conviction
 35 entered in a county in Indiana, the notice shall be served on
 36 the prosecuting attorney of the county in which the
 37 recognizance was entered into or the criminal conviction was
 38 entered.

39 (d) The notice must be accompanied by a copy of the complaint.

40 Sec. 3. (a) The state is not required to answer the notice
 41 described in section 2 of this chapter or the complaint attached to
 42 the notice.



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(b) If the state fails to answer a notice described in section 2 of this chapter or the complaint attached to the notice, the failure may not be considered:

- (1) a waiver of any rights the state may have at law;
- (2) grounds for a default judgment against the state; or
- (3) grounds for summary judgment or any other dispositive judgment that otherwise extinguishes the state's lien or encumbrance.

Sec. 4. (a) If the state answers a notice described in section 2 of this chapter or otherwise appears before the court in the case:

- (1) the action shall proceed as in other cases; and
- (2) a judgment in the case binds the state, and the lien or other encumbrance of the state may be released in the same manner as if the judgment had been entered against an individual.

(b) If the state does not answer the notice described in section 2 of this chapter or the complaint attached to the notice or does not otherwise appear before the court in the case:

- (1) the action shall proceed as in other cases; and
- (2) the lien or other encumbrance of the state identified in the complaint shall be:
 - (A) explicitly recognized in its proper priority in any order of the court that affects the lien or other encumbrance of the state; and
 - (B) paid out of any surplus remaining after liens or other encumbrances that are superior to the lien or encumbrance of the state are paid.

(c) In an action to foreclose the equity of redemption under a sale for taxes or another municipal lien or in an action involving strict foreclosure, a judgment may be entered that extinguishes a lien or other encumbrance of the state on the real property described in the complaint if:

- (1) the state does not answer;
- (2) a disclaimer is filed by the state; or
- (3) the court determines that any part of the lien for the taxes or other municipal lien that is foreclosed is superior to the lien or encumbrance of the state.

SECTION 2. IC 33-19-5-5, AS AMENDED BY P.L.183-2001, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. (a) For each small claims action the clerk shall collect from the party filing the action a small claims costs fee of thirty-five dollars (\$35). **However, a clerk may not collect a small**



1 **claims costs fee for a small claims action filed by or on behalf of the**
2 **attorney general.**

3 (b) In addition to a small claims costs fee collected under this
4 section, the clerk shall collect the following fees if they are required
5 under IC 33-19-6:

6 (1) A document fee.

7 ~~(2) A judicial salaries fee (IC 33-19-6-18).~~

8 ~~(3) (2) A document storage fee (IC 33-9-6-18.1).~~
9 **(IC 33-19-6-18.1).**

10 ~~(4) (3)~~ **(3)** An automated record keeping fee (IC 33-19-6-19).

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COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 248, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 248 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 7, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred Senate Bill 248, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 32-15-6.1 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 6.1. Actions Involving State Liens

Sec. 1. If:

- (1) the state has a lien or other encumbrance on real property; and**
- (2) an action is brought concerning a lien or other encumbrance on the real property that has greater priority than the state's lien or encumbrance, including:**
 - (A) an action:**
 - (i) involving foreclosure of the prior lien or encumbrance; or**
 - (ii) that otherwise affects the lien or encumbrance of the state; or**
 - (B) an action brought to foreclose the equity of redemption of the real property after a sale for unpaid taxes or another municipal lien;**

the lien or encumbrance of the state and its priority may be considered in the action and decided by the court.

Sec. 2. (a) In an action described in section 1 of this chapter, notice shall be sent to the state that contains the following:

- (1) The names of the parties.**
- (2) A description of the lien or encumbrance of the state.**
- (3) The date by which the state must answer. However, the time in which the state is required to answer must be the same as the time allowed for defendants who receive personal service in Indiana to file answers.**
- (4) If the lien or encumbrance is for an inheritance tax, the following if known:**
 - (A) The name of the decedent.**
 - (B) The date of the individual's death.**
 - (C) The state and county in which the individual resided on the date of death.**
 - (D) The names and addresses of:**



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- (i) the decedent's personal representatives; or
 - (ii) if personal representatives have not been appointed, the names and addresses of the decedent's heirs at law.
- (5) If the lien or encumbrance involves:**
- (A) unpaid corporate taxes; or**
 - (B) interest, costs, or penalties imposed on unpaid corporate taxes;**
- the name of the corporation that is required to pay the corporate taxes.
- (b) The plaintiff, the plaintiff's attorney, or the court clerk shall issue the notice.**
- (c) If the lien or encumbrance of the state is for:**
- (1) a tax payable to the state or for any other right or claim of the state, the notice shall be served on the attorney general; and**
 - (2) a recognizance entered into or a criminal conviction entered in a county in Indiana, the notice shall be served on the prosecuting attorney of the county in which the recognizance was entered into or the criminal conviction was entered.**
- (d) The notice must be accompanied by a copy of the complaint.**
- Sec. 3. (a) The state is not required to answer the notice described in section 2 of this chapter or the complaint attached to the notice.**
- (b) If the state fails to answer a notice described in section 2 of this chapter or the complaint attached to the notice, the failure may not be considered:**
- (1) a waiver of any rights the state may have at law;**
 - (2) grounds for a default judgment against the state; or**
 - (3) grounds for summary judgment or any other dispositive judgment that otherwise extinguishes the state's lien or encumbrance.**
- Sec. 4. (a) If the state answers a notice described in section 2 of this chapter or otherwise appears before the court in the case:**
- (1) the action shall proceed as in other cases; and**
 - (2) a judgment in the case binds the state, and the lien or other encumbrance of the state may be released in the same manner as if the judgment had been entered against an individual.**
- (b) If the state does not answer the notice described in section 2 of this chapter or the complaint attached to the notice or does not otherwise appear before the court in the case:**
- (1) the action shall proceed as in other cases; and**

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(2) the lien or other encumbrance of the state identified in the complaint shall be:

(A) explicitly recognized in its proper priority in any order of the court that affects the lien or other encumbrance of the state; and

(B) paid out of any surplus remaining after liens or other encumbrances that are superior to the lien or encumbrance of the state are paid.

(c) In an action to foreclose the equity of redemption under a sale for taxes or another municipal lien or in an action involving strict foreclosure, a judgment may be entered that extinguishes a lien or other encumbrance of the state on the real property described in the complaint if:

(1) the state does not answer;

(2) a disclaimer is filed by the state; or

(3) the court determines that any part of the lien for the taxes or other municipal lien that is foreclosed is superior to the lien or encumbrance of the state."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 248 as printed January 25, 2002.)

STEVENSON, Chair

Committee Vote: yeas 7, nays 1.

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